

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMSON REUTERS ENTERPRISE)	
CENTRE GMBH and WEST PUBLISHING)	
CORPORATION,)	C.A. No. 20-613-SB
)	
Plaintiffs/Counterdefendants,)	JURY TRIAL DEMANDED
)	
v.)	
)	PUBLIC VERSION
ROSS INTELLIGENCE INC.,)	
)	
Defendants/Counterclaimant.)	

LETTER TO THE HONORABLE STEPHANOS BIBAS FROM DAVID E. MOORE

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ROSS Intelligence, Inc.*

Dated: August 19, 2022
10304719 / 20516.00001

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Dear Judge Bibas:

Plaintiffs do not argue that the cases holding that preemption is not an affirmative defense are wrongly decided. They only claim that courts in the Third Circuit have held differently. That is not accurate.

As for delay, as the futility arguments make clear, the facts underlying a tortious interference claim do matter for the purposes of copyright preemption. ROSS obtained Plaintiffs' factual basis in February 2022, and ROSS has explained any delay from that point. In any case, delay alone is not enough to deny this motion. Plaintiffs claim no actual prejudice. They do not even claim that ROSS's actions are the result of a bad motive or that, whatever the motive, ROSS has obtained some inappropriate advantage.

Finally, the amendment is not futile.¹

I. Preemption Is Not an Affirmative Defense

Neither *Patry on Copyright* § 18:8.50 nor *FinancialApps, LLC v. Envestnet, Inc.*, 2020 WL 3640063 (D. Del. July 6, 2020), supports the argument that courts in the Third Circuit view copyright preemption as an affirmative defense. Opp. at 2. *Patry* cites no case in the Third Circuit. *FinancialApps* is a Magistrate Judge's Report and Recommendation. It was adopted in part and rejected in part by the District Court without reference to the footnote or the statement on which Plaintiffs rely. See 2020 WL 5422408 (D. Del. Sept. 10, 2020). While *Four Quarters Interfaith Sanctuary of Earth Religion v. Gille*, 2019 WL 529079 (W.D. Pa. Feb. 11, 2019), notes that the Third Circuit has not decided whether the Copyright Act is completely preemptive, Opp. at 2 n.1, Plaintiffs do not challenge the correctness of those decisions it cites that have. Finally, *Bd. of Chosen Freeholders v. Tombs*, 215 F. App'x 80, 82 (3d Cir. 2006), did not hold that the Copyright Act is not completely preemptive. Opp. at 2 n.1. The case merely indicates that claims seeking access to public records are not preempted.

II. ROSS Has Not Unduly Delayed in Bringing this Motion

Preemption in the context of tortious interference claims turns on the specific facts underlying those claims. Section IV, *infra*. Plaintiffs provided the facts underlying their tortious interference with contract claim in February 2022. See Opp., Ex. D. Any delay from that date is explained in ROSS's motion. In any case, delay alone is not enough to deny leave to amend, and Plaintiffs have not shown undue burden on this Court (e.g., there is no change in schedule or trial dates) or personal actual burden or prejudice as they must. See Mot. at 3 (citing cases).

III. Plaintiffs Fail to Identify Any Alleged Prejudice

Plaintiffs do not dispute that copyright preemption presents an issue of law. They assert prejudice, but provide no specifics. Opp. at 3.² The close of discovery is not enough. See *Langbord v. U.S. Dep't of the Treasury*, 749 F. Supp. 2d 268, 273 (E.D. Pa. 2010), *aff'd in part sub nom.*, 832 F.3d 170 (3d Cir. 2016) (allowing amendment after close of discovery where

¹ Plaintiffs claim ROSS amended its answer twice. Opp. at 1. ROSS amended its answer *once* after it partially withdrew its motion to dismiss. See Mot. at 1 n.1 (D.I. Nos. 22 & 24).

² Plaintiffs have had since July 20 to consider whether facts needed to be developed. Opp. at 3. Also expert reports were filed on August 1, after the meet and confers began. There is no argument that they would otherwise be different. See Ex. A.

The Honorable Stephanos Bibas

August 19, 2022

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cc: Counsel of Record (via electronic mail)